

gerous or deleterious traffic; that it has always been one of the commercial products traveling between state and state; and that it is entitled to the same benefit and protection that all products, whether of food or luxury or otherwise, are entitled to. In that view of the public policy of the United States respecting this traffic, I am bound to hold that this ordinance is not an exercise of the police power of the state, but is simply an attempted regulation of one of the products of interstate commerce,—an attempted regulation, not in the interest of public health and public morality, but in the interest simply of raising a revenue for the city; and, that being the case, it must be held to be invalid.

The petition of the petitioner will be sustained, and an order may be entered setting him at large.

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In re GREENWALD.

(Circuit Court, N. D. California. November 18, 1896.)

**1. HABEAS CORPUS—CONVICTION OF CRIME—DISCHARGE.**

Where a prisoner, seeking to be discharged on habeas corpus, shows in his petition for the writ that his imprisonment is under and by virtue of a judgment of a court, competent to try the offenses for which he is imprisoned, directing him to be imprisoned on conviction of such offenses, it is necessary for him, in order to entitle himself to his discharge, to show the nullity of such judgment, or that he has served the sentence pronounced by it.

**2. IMPRISONMENT UNTIL PAYMENT OF FINE.**

While there is no statute of the United States in terms providing that a fine imposed may be enforced by imprisonment until it is paid, Rev. St. § 1042, implies that this may be done; but there is nothing to indicate that such imprisonment may be extended beyond the maximum term of imprisonment fixed by congress in punishment of the particular offense denounced, and no authority for imprisonment in a state prison in default of the payment of a fine imposed.

**3. CRIMINAL LAW—SUCCESSIVE SENTENCES.**

Successive sentences may be imposed upon a defendant, convicted of several offenses included in one indictment.

In the Matter of the Application of Louis Greenwald for a Writ of Habeas Corpus.

Crandall & Bull, for petitioner.

Samuel Knight, Asst. U. S. Atty., for respondent.

ROSS, Circuit Judge. The petition for a writ of habeas corpus in this case alleges that the petitioner, Louis Greenwald, is imprisoned in the California state prison, in charge of W. E. Hale, the warden thereof, under judgment and commitment thereon of the district court of the United States for the Northern district of California. Annexed to and made a part of the petition is a copy of the commitment. The commitment commands the marshal of the district to take and keep and safely deliver the said Louis Greenwald into the custody of the keeper or warden or other officer in charge of the state prison at San Quentin, Marin county, Cal., forthwith, and further commands the said keeper and warden and other officer in charge of the said prison to receive from the marshal the said Louis Greenwald, and keep and imprison him therein, "for a

term of six years, and until each and every and all of said fines be paid, or until he be discharged by due process of law"; the commitment previously reciting that whereas, at the February, 1894, term of the district court for the Northern district of California, held at the court room thereof, in the city and county of San Francisco, on the 19th day of May, 1894, Louis Greenwald was convicted of "conspiracy, smuggling opium, etc., committed on the 20th day of May, the 7th day of August, the 25th day of September, 1893, at the city and county of San Francisco, and within the state and Northern district of California, and within the jurisdiction of said court"; and further reciting that "whereas, on the 5th day of June, A. D. 1894, being a day in the said term of said court, said Louis Greenwald was, for said offenses, of which he stood convicted, as aforesaid, by the judgment of said court, ordered that on the first count of the indictment he pay a fine of two thousand dollars (\$2,000), and be imprisoned for the term of two years, to date from June 5, 1894, and, in default of the payment of the said fine of two thousand dollars, that he be further imprisoned until said fine be paid, or until he be otherwise released by due process of law; and further ordered that on the fourth count of said indictment he pay a fine of two thousand dollars (\$2,000), and be imprisoned for the term of two years, and, in default of the payment of the said fine of \$2,000, that he be further imprisoned until said fine be paid, or until he be otherwise released by due process of law; and further ordered that the imprisonment of the said Louis Greenwald upon the judgment of imprisonment on the fourth count of the indictment commence upon the expiration of the sentence upon the first count of the indictment; and further ordered that on the eleventh count of said indictment he pay a fine of two thousand dollars (\$2,000), and be imprisoned for the term of two years, and, in default of the payment of said fine of \$2,000, that he be further imprisoned until said fine be paid, or until he be otherwise released by due process of law; and further ordered that the imprisonment of the said Louis Greenwald upon the judgment of imprisonment upon the eleventh count of the indictment commence upon the expiration of the sentence upon the fourth count of the indictment; and further ordered that the judgments of imprisonment be executed upon the said Louis Greenwald until the other or further order of the court, by imprisonment in the state prison of the state of California at San Quentin, Marin county, California."

The alleged illegality of the imprisonment of the petitioner, according to his petition and the argument of his counsel, consists in this: (1) That his imprisonment has continued ever since June 5, 1894, a period of more than two years, and that there is no authority of law for a longer period of imprisonment than two years for the offense for which the petitioner was sentenced. (2) That the petitioner was sentenced to imprisonment by the district court for the Northern district of California, "on three separate counts of the indictment against him, of conspiracy, smuggling opium, etc., to wit, on first, fourth, and eleventh counts of said indictment, as follows: On the first count to pay a fine of \$2,000, and to be imprisoned for

two years, to date from June 5, 1894, and, in default of the payment of said \$2,000 fine, then to be further imprisoned until said fine was paid, or until otherwise released by due process of law; on the fourth count to pay a fine of \$2,000, and to be imprisoned for two years, and, in default of the payment of said fine, to be further imprisoned until said fine be paid, or until otherwise released by due process of law, and that the imprisonment on the fourth count begin on the expiration of the sentence on the first count; and on the eleventh count to pay a fine of \$2,000, and to be imprisoned for two years, and, in default of the payment of said fine, to be further imprisoned until said fine be paid, or until otherwise released by due process of law, and that the imprisonment on the eleventh count begin on the expiration of the sentence on the fourth count; and also to be imprisoned for the term of six years, and until each and every and all of said fines be paid, or until he be discharged by due process of law; and that said sentences are, and each of them is, uncertain and indefinite, and dependent upon undefined contingencies; and it cannot be ascertained from the sentence on the fourth and eleventh counts of said indictment when said sentences, or either of them, begin or end, or when the six years' term of imprisonment begins or ends." (3) That the imprisonment of the petitioner is illegal in that he was sentenced and has been imprisoned beyond the maximum time fixed by law, and that he has been already imprisoned for a longer period than that allowed by law. (4) That his imprisonment is illegal in that the commitment does not show that the petitioner was convicted of any crime. (5) That his imprisonment is illegal in that the judgment of the district court sentencing the petitioner to imprisonment does not show that he was guilty of any offense for which he can be legally sentenced to any imprisonment. The petition also alleges "that the cause or pretense of such imprisonment, according to the best knowledge and belief of the said Louis Greenwald, is as follows, to wit: 'A judgment and decree of the district court of the United States of America, Northern district of California, directing the said Louis Greenwald to be imprisoned on conviction of conspiracy, smuggling opium,' " etc.

The writ prayed for must be awarded unless it appears from the petition itself that the petitioner is not entitled thereto. Rev. St. § 751. A copy of the judgment upon which the commitment set out in the petition is based is not made to appear, although the petition alleges that the petitioner is restrained of his liberty by virtue of a judgment of the district court of the Northern district of California, directing him "to be imprisoned on conviction of 'conspiracy, smuggling opium,' " etc. It devolves, I think, upon a prisoner thus showing by his petition that his imprisonment is under and by virtue of the judgment of a court competent to try the offenses of conspiracy and smuggling opium, directing him to be imprisoned on conviction "of conspiracy, smuggling opium," etc., to show the nullity of the judgment, or that he has served the sentence pronounced by it. Mere error, of course, cannot be considered on habeas corpus. If the judgment is valid upon its face,

a certified copy of it is sufficient to authorize the warden to hold the prisoner, without any warrant or commitment. *Ex parte Wilson*, 114 U. S. 417, 421, 5 Sup. Ct. 935. And as the petition itself shows that the petitioner is restrained of his liberty under and by virtue of the judgment of a court competent to try the offenses of conspiracy and smuggling opium, and was based on his conviction of conspiracy and smuggling opium, if, for any reason, the judgment, or any part of it, under which the petitioner is held, is void, or the petitioner has served out the sentence imposed thereby, it is incumbent upon him to go further, and show that condition of things.

Notwithstanding the affirmative averment of the petition that the petitioner is held under and by virtue of the judgment of the district court of the Northern district of California, as well as under the commitment annexed to and made a part of the petition, the argument in support of the issuance of the writ is based entirely upon the matters appearing in the commitment. It is therein recited, in substance, that the petitioner was on the 19th day of May, 1894, at the February, 1894, term of the district court of the Northern district of California, held at the court room thereof in the city and county of San Francisco, convicted of "conspiracy, smuggling opium, etc., committed on the 20th day of May, the 7th day of August, the 25th day of September, 1893, at the city and county of San Francisco, and within the jurisdiction of said court," for which offenses, of which he stood convicted, the court, at a subsequent day of the term, to wit, June 5, 1894, by its judgment, sentenced him, under the first count of the indictment against him, to imprisonment in the state's prison at San Quentin, for the term of two years from June 5, 1894, and to pay a fine of \$2,000, and, in default of the payment thereof, that he be further imprisoned until said fine be paid, or until he be otherwise released by due process of law; and, under the fourth count of the indictment, sentenced him (the petitioner) to imprisonment in the said prison for the period of two years, and to pay a fine of \$2,000, and, in default of the payment thereof, to further imprisonment in the said prison, until the said fine be paid, or until he be otherwise released by due process of law,—such imprisonment under the fourth count of the indictment to commence upon the expiration of the sentence based upon the first count thereof; and, under the eleventh count of the indictment, sentenced him (the petitioner) to two years' imprisonment in the said prison, and to pay a fine of \$2,000, and, in default of the payment thereof, to further imprisonment in the said prison until the said fine be paid, or until he be otherwise released by due process of law,—such imprisonment under the eleventh count of the indictment to commence upon the expiration of the sentence based upon the fourth count thereof.

The statute providing for the punishment of persons convicted of the crime of conspiracy is section 5440 of the Revised Statutes, which reads:

"If two or more persons conspire either to commit any offense against the United States, or to defraud the United States in any manner or for any purpose, and one

or more of such parties do any act to effect the object of the conspiracy, all the parties to such conspiracy shall be liable to a penalty of not less than one thousand dollars, and not more than ten thousand dollars, and to imprisonment not more than two years."

The statute providing for the punishment of persons convicted of the crime of smuggling is section 2865 of the Revised Statutes, which reads as follows:

"If any person shall knowingly and willfully, with intent to defraud the revenue of the United States, smuggle, or clandestinely introduce, into the United States, any goods, wares, or merchandise, subject to duty by law, and which should have been invoiced, without paying or accounting for the duty, or shall make out or pass, or attempt to pass, through the custom-house, any false, forged, or fraudulent invoice, every such person, his, her, or their aiders and abettors, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in any sum not exceeding five thousand dollars, or imprisoned for any term of time not exceeding two years, or both, at the discretion of the court."

There is no statute of the United States in terms providing that a fine imposed may be enforced by imprisonment until it is paid. Section 1042 of the Revised Statutes, however, implies that this may be done. That section is as follows:

"When a poor convict, sentenced by any court of the United States to pay a fine, or fine and costs, whether with or without imprisonment, has been confined in prison thirty days, solely for the non-payment of such fine, or fine and cost, he may make application in writing to any commissioner of the United States court in the district where he is imprisoned, setting forth his inability to pay such fine, or fine and cost, and after notice to the district attorney of the United States, who may appear, offer evidence, and be heard, the commissioner shall proceed to hear and determine the matter; and, if on examination it shall appear to him that such convict is unable to pay such fine, or fine and cost, and that he has not any property exceeding twenty dollars in value, except such as is by law exempt from being taken on execution for debt, the commissioner shall administer to him the following oath: 'I do solemnly swear that I have not any property, real or personal, to the amount of twenty dollars, except such as is by law exempt from being taken on civil precept for debt by the laws of (state where oath is administered); and that I have no property in any way conveyed or concealed, or in any way disposed of, for my future use or benefit. So help me God.' And thereupon such convict shall be discharged, the commissioner giving to the jailer or keeper of the jail a certificate setting forth the facts."

There is nothing, however, in the foregoing provisions to indicate that any imprisonment to enforce the payment of a fine imposed may be extended beyond the maximum term of imprisonment fixed by congress in punishment of the particular offense denounced, and certainly no authority for imprisonment in a state prison in default of the payment of a fine imposed.

So much of the judgment recited in the commitment under which the petitioner, according to the averments of the petition, is in part held, as directs his imprisonment in the state prison at San Quentin in default of the payment of the fines imposed, is therefore a nullity, and, being void, it is as if it never existed. *Ex parte Wadleigh*, 82 Cal. 518, 520, 23 Pac. 190; *Ex parte Arras*, 78 Cal. 304, 20 Pac. 683. The provisions of the judgment recited in the commitment must therefore be treated as successive sentences of two years' imprisonment each, the second commencing upon the expiration of the first sentence of two years, and the third commencing upon the expiration of the second two years' sentence. Al-

though there is no statute of the United States in terms providing for successive sentences, yet as provision is made by statute for the inclusion of more than one offense in the same indictment when there are several charges against any person for the same act or transaction, or for two or more acts or transactions connected together, or for two or more acts or transactions of the same class of crimes or offenses (Rev. St. § 1024), it would seem to follow, necessarily, that successive sentences may be lawfully imposed; otherwise, the punishment prescribed by statute for each of such offenses so included in one indictment could not be imposed, although properly prosecuted, and notwithstanding the due and legal conviction of the offender. In support of this view, see *In re Packer*, 18 Colo. 525, 33 Pac. 578; *In re Walsh* (Neb.) 55 N. W. 1075; *In re Wilson* (Utah) 39 Pac. 498; *In re Peters*, 12 Fed. 461; *U. S. v. Patterson*, 29 Fed. 778, 779.

Whatever credits for good behavior the petitioner may be entitled to can only be properly taken from the end of the entire term of his imprisonment. That is the law of the state governing the prison where the petitioner is held (*Ex parte Dalton*, 49 Cal. 463), and is applicable to the petitioner, who is confined in the state prison by permission of the laws of California. By section 5441 of the Revised Statutes it is provided that, in every case where any person convicted of any offense against the United States is sentenced to imprisonment for a period longer than one year, the court by which the sentence is passed may order the same to be executed in any state jail or penitentiary within the district or state where such court is held, the use of which jail or penitentiary is allowed by the legislature of the state for that purpose; and by section 5544 of the same statutes it is provided, among other things, that all United States prisoners confined in the jails or penitentiaries of any state for offenses against the United States shall be entitled to the same rule of credits for good behavior applicable to other prisoners in the same jail or penitentiary.

It results from what has been said, and in view of the allegations of the petition itself, that the petitioner is now legally held under the second sentence of two years' imprisonment, and is not, therefore, entitled to the writ prayed for. Writ denied, and petition dismissed.

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Ex parte STERNAMAN.

(District Court, N. D. New York. December 24, 1896.)

**EXTRADITION—SUFFICIENCY OF COMPLAINT TO WARRANT ARREST.**

A complaint, on oath by a duly-authorized officer of Canada, alleged that S. had been charged before a justice of the peace of Canada with murder there committed, and a warrant issued for her arrest, the original warrant being attached to the complaint, and that the officer believed the charge as stated in the warrant to be true. *Held* sufficient to give the commissioner jurisdiction to issue a warrant for the arrest of S.

On habeas corpus and certiorari to review action of Commissioner Joseph L. Fairchild in holding the petitioner for extradition to Canada on the charge of murder.

Frank C. Ferguson and Wallace Thayer, for petitioner.

W. F. Mackey, Asst. U. S. Atty., and Charles J. Thomas, opposed.

COXE, District Judge. Two questions were presented upon the oral argument. First. Did the complaint presented to the commissioner confer upon him jurisdiction to issue the warrant of arrest? Second. Did the evidence presented justify the commissioner in holding the petitioner for extradition?

The second of these questions was disposed of at the argument, the court being of the opinion that the commissioner was right in his conclusion that the facts should be submitted to a grand jury. The question of jurisdiction was reserved to enable counsel for the prosecution to present authorities. A great mass of testimony was taken by the commissioner, no objection to the complaint being raised before him. The commissioner having held the petitioner upon the merits and the court being of the opinion that his action in this regard was clearly right, it was suggested at the argument that a ruling in her favor upon the jurisdictional question would not avail the petitioner, but would result in a new warrant being issued based upon the ample proof now before the commissioner. It was thought that such a result would be productive of expense, delay and annoyance to all concerned without any apparent advantage to the petitioner.

There is no pretense that she has been misled in any way, or that the proceedings would have taken a different course if the complaint had been drawn to obviate all of the objections now advanced. So far as appears the examination was absolutely fair to the petitioner, every opportunity to develop her defense being accorded her. The court should not at this late day make a ruling which will render nugatory this long and arduous investigation and compel the evidence to be taken de novo, without being convinced that the complaint is fatally defective. It is, however, the undoubted right of counsel for the petitioner to have a ruling upon this question also. The statute (section 5270, Rev. St.) and the treaty with Great Britain both provide for a complaint made under oath charging the person to be extradited with having committed within the foreign jurisdiction one of the crimes enumerated "to the end that the evidence of criminality may be heard and considered."

The complaint should set forth clearly and briefly the offense charged. It need not be drawn with the formal precision of an indictment. If it be sufficiently explicit to inform the accused person of the precise nature of the charge against him it is sufficient. The extreme technicality with which these proceedings were formerly conducted has given place to a more liberal practice, the object being to reach a correct decision upon the main question—is there reasonable cause to believe that a crime has

been committed? The complaint may, in some instances, be upon information and belief. The exigencies may be such that the criminal may escape punishment unless he is promptly apprehended by the representatives of the country whose law he has violated. From the very nature of the case it may often happen that such representative can have no personal knowledge of the crime. If the offense be one of the treaty crimes and if it be stated clearly and explicitly so that the accused knows exactly what the charge is, the complaint is sufficient to authorize the commissioner to act. The foregoing propositions are, it is thought, sustained by the following authorities: *In re Farez*, 7 Blatchf. 345, Fed. Cas. No. 4,645; *In re Roth*, 15 Fed. 506; *In re Henrich*, 5 Blatchf. 414, Fed. Cas. No. 6,369; *Ex parte Van Hoven*, 4 Dill. 415, Fed. Cas. No. 16,859; *In re Breen*, 73 Fed. 458; *Ex parte Lane*, 6 Fed. 34; *In re Herres*, 33 Fed. 165; *Castro v. De Uriarte*, 16 Fed. 93; *In re Macdonnell*, 11 Blatchf. 79, Fed. Cas. No. 8,771.

That the complaint shows evidences of having been hastily drawn, that it is inartistic from the point of view of the accomplished technical pleader and that it might be more ample and exact, may as well be conceded. The warrant issued by the Canadian justice of the peace must be regarded as a part of the complaint. The original was produced before the commissioner, marked as an exhibit and attached to the complaint. The following facts, sworn to positively, were then presented to the commissioner: First. That John Wilson Murray resides in Toronto, Canada, is chief inspector of the criminal investigation department of Ontario and is a duly-authorized agent of Canada to make the complaint against Olive A. Sternaman. Second. That on the 27th of October, 1896 (the date is incorrectly stated in the complaint as August 13th, but no point is made of this mistake), at Rainham, Haldimand county, Ontario, the said Sternaman was charged, upon oath, before William Parker, a justice of the peace for said county, "for that she did kill and murder one George W. Sternaman." Third. That a warrant was duly issued for the arrest of said Sternaman by said Parker. Fourth. That the warrant on its face shows that it was issued upon complaint made upon oath before said Parker, charging said Sternaman with having killed and murdered George W. Sternaman at Rainham on the 13th day of August, 1896. Fifth. That said warrant commands all constables in said county of Haldimand to apprehend the said Sternaman and bring her before a justice to answer the said charge. Sixth. That said Sternaman is a fugitive from justice and is in the city of Buffalo. Seventh. That said John Wilson Murray verily believes the charge that said Sternaman murdered George W. Sternaman at Rainham on the 13th day of August, 1896, to be true.

Each of the foregoing propositions except the seventh is a statement of fact. The seventh is a statement of belief on the part of the complainant that the charge of murder is true. The complaint is criticised as being on information and belief because of this last averment. The commissioner had before him



an official having undisputed authority to demand the extradition of fugitives from justice. He was told by this official under oath that one Olive A. Sternaman, a fugitive, charged with having committed a murder in Canada, was then in Buffalo; that she had been charged with murder upon oath before the Canadian authorities and that a warrant was out for her apprehension,—the original warrant being shown the commissioner. Lastly, the commissioner had the oath of the chief inspector of criminal investigation of Ontario that he believed the charge of murder as stated in the warrant to be true. Was not this sufficient to put the commissioner's machinery in motion? Would he have been justified in declining to issue the warrant until the evidence which was to sustain the charge was adduced before him? If so, the usefulness of extradition as a practical factor in the punishment of crime will cease. While the commissioner is preparing the evidence the defendant will be preparing his escape. That the petitioner was fully informed of the charge against her is beyond dispute. She appeared with counsel and the long investigation was concluded without objection that the complaint failed in particularity. The case of *In re Adutt*, 55 Fed. 376, is authority for the proposition that in such cases the commissioner may, upon objection by the defendant, make the complaint more definite and certain. "That is," says the court, "a matter for the commissioner acting within his jurisdiction, and not a matter going to the jurisdiction of the commissioner to entertain the complaint."

The evidence against the petitioner is almost wholly circumstantial. From the very nature of the case no one, much less the Toronto inspector, could swear positively that murder was committed by her. What more could the inspector say than that he believed that she had committed the murder? He might have pleaded the evidence but such pleading is condemned in criminal and civil actions alike. Conceding the want of particularity, what fact was omitted, relating to the charge against the petitioner, which the complainant or any one else could have truthfully supplied? The chemist who made the analysis at Toronto could have sworn to the presence of arsenic in the stomach of the deceased, but he could not have sworn to a complaint positively charging murder based upon that fact alone. If the complaint be carefully analyzed it will be found, I think, that the officer authorized to conduct the proceedings placed before the commissioner facts sufficient to warrant action upon his part. The facts are stated positively; the conviction that the petitioner committed the murder is stated on belief.

The writ is dismissed.

## UNITED STATES v. KNAUTH et al.

(Circuit Court, S. D. New York. December 9, 1896.)

## 1. CUSTOMS DUTIES—INVOICE IN FOREIGN CURRENCY—VALUATION.

When the value of imported merchandise is stated in the invoice in a foreign currency, the value of such currency at the time of exportation from the foreign country is to be taken for the purpose of fixing the valuation of the merchandise in United States currency.

## 2. SAME—VALUES OF FOREIGN COINS—PROCLAMATION BY SECRETARY.

The statement of the values of foreign coins, contained in a proclamation thereof by the secretary of the treasury, is conclusive upon the customs officials in reducing to United States currency a valuation of imported merchandise.

## 3. SAME—DEPRECIATED FOREIGN CURRENCY.

A proclamation of the secretary of the treasury stated the value of the florin of Austria-Hungary to be \$.482, according to the gold standard, \$.32 according to the silver standard, with silver the nominal standard, paper the actual standard, its depreciation measured by the gold standard. *Held*, that a valuation of imported merchandise in florins must be reduced to United States currency on the basis of the gold standard.

This was an appeal by the government from a decision of the board of general appraisers reversing the decision of the collector of the port of New York as to the valuation of certain ivory buttons imported from Austria by Knauth, Nachod & Kuhne.

The goods were exported in three invoices, one of June 20, 1892, and two of July 5, 1892. They were all entered July 22, 1892. The value of the goods was stated in the invoices in florins, which were reduced to United States currency by the collector, in the absence of a currency certificate of depreciation by the United States consul, at a valuation of \$.482 each, in accordance with the quarterly currency circular in force at the time of the exportation from Austria. The importers claimed, in their protest, that duty should be assessed on the value of the Austrian silver florin, as proclaimed by the secretary of the treasury July 1, 1892, viz. \$.32; that the unit of value in Austria-Hungary is the florin, of which the value is \$.32, and no more; that a consular certificate, giving the florin a depreciated value in excess of \$.32, would be of no effect, unless showing a depreciation below the silver florin, the standard and monetary unit of the country; that the actual standard in Austria-Hungary is the silver florin, the value of which, as estimated by the director of the mint, and proclaimed by the secretary of the treasury July 1, 1892, was \$.32, and no more; and that there is no gold florin in actual circulation or use, and no gold standard for the florin.

Henry D. Sedgwick, Asst. U. S. Atty.  
Stephen G. Clarke, for defendant.

WHEELER, District Judge. These importations are from Austria-Hungary in three invoices in florins, one of June 30, and the other two of July 5, and one entry of July 21, 1892. The collector computed the value of the first at the silver standard, according to the proclamation of April 1, and of the other two at the gold standard of the proclamation of July 1, 1892. The board of general appraisers appear to have computed all according to the silver standards. Some question was made at the argument whether the value of the currency at the time of the exportation from the foreign country or at the time of importation to this country should govern. The value to be ascertained is "the actual market value or wholesale price of such merchandise as bought and sold in usual wholesale quanti-

ties, at the time of exportation to the United States, in the principal markets of the country whence imported." Customs Administrative Act 1890, § 19 (26 Stat. 139). The ascertainment of this market value must include the value of the foreign currency at that time. This seems to be according to the practice and understanding of the treasury department. According to the proclamation of July 1, 1892, the value of the florin of Austria-Hungary at the gold standard there in the currency of the United States was \$.482; according to the silver standard there, \$.32; with "silver the nominal standard, paper the actual standard, the depreciation of which is measured by the gold standard." The value of foreign coin, for this purpose, as expressed in the money of account of the United States, is that of the pure metal of such coin of standard value. Tariff Act 1890, § 52 (26 Stat. 624). The standard referred to for this purpose of ascertaining actual value in the currency of the United States must be real standard, and not the merely nominal standard. The currency of the United States taken there would buy according to its value compared with the standard by which values there would be measured. This, according to the proclamation of July 1st, was the gold standard; and this would seem to have been conclusive upon the customs officers and importers. *Hadden v. Merritt*, 115 U. S. 25, 5 Sup. Ct. 1169; *U. S. v. Klingenberg*, 153 U. S. 93, 14 Sup. Ct. 790; *Wood v. U. S.*, 18 C. C. A. 553, 72 Fed. 254. According to these views, the liquidation of the collector was right. Decision of appraisers reversed.

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WERTHEIMER et al. v. UNITED STATES.

(Circuit Court, S. D. New York. December 9, 1896.)

No. 505.

CUSTOMS DUTIES—CLASSIFICATION—EMBROIDERED GLOVES.

Gloves, having two rows of single-cord embroidery, between three lines or points of the material, raised up and sewed through and through, are not dutiable, under paragraph 458 of the tariff act of 1890, as "embroidered gloves with more than three single strands or cords."

This was an appeal by Wertheimer & Co. from a decision of the board of general appraisers sustaining the assessment of duties by the collector of the port of New York upon certain embroidered gloves, imported by the appellants.

David Ives Mackey, for plaintiffs.  
Henry C. Platt, Asst. U. S. Atty.

WHEELER, District Judge. Paragraph 458 of the act of 1890 puts an additional duty "on all embroidered gloves with more than three single strands or cords." The strands or cords referred to are those of the embroidery. *Wertheimer v. U. S.*, 19 C. C. A. 504, 73 Fed. 296. The gloves in question have two rows of single-cord embroidery between three lines or points of the material, raised up and sewed through and through. They have been assessed as